

1 APPEARANCES:

2
3 FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
4 BY: VICKI CHOU
5 ASSISTANT UNITED STATES ATTORNEY
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7 LOS ANGELES, CA 90012
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9 FOR DEFENDANT: LAW OFFICES OF FREDRICO McCURRY
10 BY: FREDRICO McCURRY
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1 Los Angeles, California, Wednesday, July 11, 2012

2 1:30 p.m.

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4 THE CLERK: Calling CR 11-841-DSF, *United States of*
5 *America vs. Robert Glenn Johns.*

6 MS. CHOU: Good afternoon, your Honor. Vicki Chou for
7 the United States.

8 MR. McCURRY: Good afternoon, your Honor. Fred
9 McCurry representing Robert Johns, present in custody.

10 THE COURT: Good afternoon.

11 Why don't you just remain where you are, Mr. McCurry.

12 This is the time set for sentencing. I've read and
13 considered the presentence report and the addendum, and I've
14 also read and considered the position papers filed by the
15 government, the position and objections filed by the defendant,
16 and the response to the objections filed by the government.

17 Mr. McCurry, have you had enough time to read the
18 documents and review them with Mr. Johns?

19 MR. McCURRY: Yes, your Honor.

20 THE COURT: Did you explain the contents of the
21 documents to him?

22 MR. McCURRY: Yes, your Honor.

23 THE COURT: Do you have any concerns about his ability
24 to understand those documents?

25 MR. McCURRY: No, your Honor.

1 THE COURT: Mr. Johns, did you get those documents?

2 THE DEFENDANT: I did.

3 THE COURT: Did you read them?

4 THE DEFENDANT: I did.

5 THE COURT: Do you need any more time to read them?

6 THE DEFENDANT: No, I don't.

7 THE COURT: Did Mr. McCurry explain them to you?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you understand them?

10 THE DEFENDANT: Yes.

11 THE COURT: And, Mr. McCurry, is there anything you
12 want to contest or change in the presentence report, other than
13 what was submitted in writing?

14 MR. McCURRY: No, your Honor.

15 THE COURT: Is there anything you would like to
16 present in mitigation?

17 MR. McCURRY: Your Honor, we'll just submit on the
18 pleadings.

19 THE COURT: All right. Thank you.

20 Mr. Johns, is there anything you would like to say
21 before I sentence you?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: All right.

24 And, Ms. Chou, anything from the government?

25 MS. CHOU: The government submits on the papers.

1 THE COURT: And I'm speculating that the victim is not
2 present; is that correct?

3 MS. CHOU: That's correct, your Honor.

4 THE COURT: All right.

5 The probation officer has addressed several of
6 Mr. Johns' objections. That Defendant McCullah has been
7 dismissed does not make the reference to him inappropriate.
8 Neither the probation officer nor the Court nor the government
9 are limited to consideration of facts admitted in the plea
10 agreement so there's no error in the reference to Mr. Knoles.
11 That's the probation officer's statement, clearly not Mr. Johns'
12 statement. These facts do not impact sentencing and the Court
13 need not rule on the objections.

14 I find the revised report to be accurate and correct,
15 and I adopt the report and the calculation of the advisory
16 sentencing guidelines.

17 The advisory guidelines are the starting point and the
18 initial benchmark in the Court's analysis. I'm consulting and
19 taking into account the November 2011 edition of the guidelines.

20 The total offense level is 22. The criminal history
21 category is 6. The guideline range for custody is 84 to 105
22 months and the range for supervised release is one to three
23 years. The special assessment to the Crime Victims Fund is
24 \$100.

25 In making an individualized determination based on the

1 facts, I'm also considering the factors described in
2 18 United States Code Section 3553(a), especially, but not
3 exclusively, the nature and circumstances of the offense and the
4 history and characteristics of the defendant, the need for the
5 sentence to reflect the seriousness of the offense, to promote
6 respect for the law and provide just punishment, to afford
7 adequate deterrence for criminal conduct and to protect the
8 public from further crimes of the defendant. I'm considering
9 the kinds of sentences available and the kinds of sentence and
10 sentencing range established for the applicable category of
11 offense committed by the applicable category of defendant and
12 the need to avoid unwarranted sentence disparities among
13 defendants with similar records who've been convicted of similar
14 offenses.

15 I agree with the government for the reasons stated in
16 the government's position papers that the maximum available
17 sentence of 120 months is appropriate here. Even a cursory
18 review of the presentence report and defendant's experience with
19 the criminal justice system establishes that even a ten-year
20 sentence will not afford adequate deterrence for criminal
21 conduct. The public will only be safe when Mr. Johns is in
22 prison, and clearly those around him are not even safe when he
23 is in prison.

24 His history and characteristics establish that he is
25 much more dangerous than others who have committed similar

1 crimes, and the nature and circumstances of the offense are so
2 egregious as to compel imposition of the maximum legal sentence.

3 Without the excellent negotiating skills of his
4 attorney and his willingness to enter into this plea agreement,
5 there is no doubt that a significantly longer sentence would
6 have been imposed.

7 The Court has considered but rejects defendant's
8 arguments concerning the conditions of his incarceration. The
9 Court has no reason to believe the facility in which he was held
10 did not meet federal standards. Defendant is presently in the
11 custody of the United States Marshal's Service, and the legal
12 requirements are different from those relating to sentenced
13 prisoners.

14 I will now state the sentence, but counsel will have a
15 final chance to make legal objections before sentence is
16 imposed.

17 Does either counsel know of any reason why sentence
18 should not now be imposed?

19 MS. CHOU: No, your Honor.

20 MR. McCURRY: No, your Honor.

21 THE COURT: I find that the following sentence is
22 reasonable and is sufficient, but is no greater than necessary,
23 to comply with the purposes stated in 18 United States Code
24 Section 3553(a).

25 It's ordered that the defendant shall pay to the

1 United States a special assessment of \$100, which is due
2 immediately. Any unpaid balance shall be due during the period
3 of imprisonment at the rate of not less than \$25 per quarter and
4 pursuant to the bureau of prisons inmate financial
5 responsibility program.

6 It's ordered that the defendant shall pay restitution
7 in the total amount of \$414,132.52 pursuant to 18 United States
8 Code Section 3663(a). The amount of restitution shall be paid
9 to the Federal Correctional Complex in Victorville, Attention
10 Financial Management, P.O. Box 5400 in Adelanto, California.
11 Restitution shall be due during the period of imprisonment at
12 the rate of not less than \$25 per quarter and pursuant to the
13 bureau of prisons inmate financial responsibility program. If
14 any amount of the restitution remains unpaid after release from
15 custody, nominal monthly payments of at least 10 percent of
16 defendant's gross monthly income, but not less than \$50,
17 whichever is greater, are payable during the period of
18 supervised release and shall begin 30 days after the
19 commencement of supervision. Nominal restitution payments are
20 ordered as the Court finds that the defendant's economic
21 circumstances do not allow for either immediate or future
22 payment of the amount ordered.

23 The defendant shall be held jointly and severally
24 liable with co-participant Jason Knoles in this case for the
25 amount of restitution ordered in the judgment. The victim's

1 recovery is limited to the amount of loss and the defendant's
2 liability for restitution ceases if and when the victim receives
3 full restitution.

4 Pursuant to 18 United States Code Section
5 3612(f)(3)(A), interest on the restitution ordered is waived
6 because the defendant does not have the ability to pay interest.
7 Payments may be subject to penalties for default and delinquency
8 pursuant to 18 United States Code Section 3612(g). The
9 defendant shall comply with General Order No. 01-05. All fines
10 are waived as I find that the defendant does not have the
11 ability to pay a fine in addition to restitution.

12 Pursuant to the Sentencing Reform Act of 1984, it's
13 the judgment of the Court that the defendant, Robert Glenn
14 Johns, is hereby committed on Count 2 of the Indictment to the
15 custody of the bureau of prisons to be imprisoned for a term of
16 120 months to be served consecutively to any undischarged term
17 of imprisonment remaining in United States District Court,
18 Eastern District of California, Docket No. 1:06-CR-79.

19 On release from imprisonment, the defendant shall be
20 placed on supervised release for a term of three years under the
21 following terms and conditions:

22 One, the defendant shall comply with the rules and
23 regulations of the U.S. Probation Office, General Order 05-02,
24 and General Order 01-05, including the three special conditions
25 delineated in General Order 01-05.

1 Two, defendant shall refrain from any unlawful use of
2 a controlled substance. The defendant shall submit to one drug
3 test within 15 days of release from imprisonment and at least
4 two periodic drug tests thereafter, not to exceed eight tests
5 per month as directed by the probation officer.

6 Three, the defendant shall participate in an
7 outpatient substance abuse treatment and counseling program that
8 includes urinalysis, breath or sweat patch testing as directed
9 by the probation officer. The defendant shall abstain from
10 using illicit drugs and alcohol and abusing prescription
11 medications during the period of supervision.

12 Four, during the course of supervision, the probation
13 officer, with the agreement of the defendant and defense
14 counsel, may place the defendant in a residential drug treatment
15 program approved by the U.S. Probation Office for treatment of
16 narcotic addiction or drug dependency which may include
17 counseling and testing to determine if the defendant has
18 reverted to the use of drugs and the defendant shall reside in
19 the treatment program until discharged by the program director
20 and probation officer.

21 Five, as directed by the probation officer, the
22 defendant shall pay all or part of the cost of treating the
23 defendant's drug and alcohol dependency to the after-care
24 contractor during the period of community supervision pursuant
25 to 18 United States Code Section 3672. The defendant shall

1 provide payment and proof of payment as directed by the
2 probation officer.

3 Six, during the period of community supervision, the
4 defendant shall pay the special assessment and restitution in
5 accordance with this judgment's orders pertaining to such
6 payment.

7 Seven, the defendant shall cooperate in the collection
8 of a DNA sample.

9 And eight, the defendant shall pay all monies received
10 from income tax refunds, lottery winnings, inheritance,
11 judgments, and any anticipated or unexpected financial gains to
12 the outstanding court-ordered financial obligation.

13 The Court authorizes the probation office to disclose
14 the presentence report to the substance abuse treatment provider
15 to facilitate the defendant's treatment for narcotic addiction
16 or drug dependency. Further re-disclosure of the presentence
17 report by the treatment provider is prohibited without the
18 consent of this Court.

19 The defendant is remanded to the custody of the
20 U.S. Marshal.

21 Does either counsel have anything further?

22 MS. CHOU: Not from the government, your Honor.

23 MR. McCURRY: Your Honor, we would request the Court
24 make a recommendation to the bureau of prisons that Mr. Johns be
25 housed in a California facility.

1 THE COURT: I'll make that recommendation. Of course,
2 Mr. McCurry, I'm sure you'll advise your client that the bureau
3 of prisons does not have to follow it.

4 MR. McCURRY: Yes, your Honor.

5 THE COURT: And is there anything to be dismissed,
6 Ms. Chou?

7 MS. CHOU: Yes, your Honor. The government moves to
8 dismiss the remaining count of the Indictment, Count 1.

9 THE COURT: Granted.

10 The statement of reasons shall be included in the
11 commitment order and judgment and shall be provided to the
12 probation office, the sentencing commission, and the bureau of
13 prisons. A complete copy of the presentence report as revised
14 shall be provided to the bureau of prisons and the sentencing
15 commission. Any other copies of the report and related
16 materials shall remain confidential. If an appeal is taken,
17 counsel on appeal shall have access to the report.

18 Sir, you have a right to appeal your conviction if you
19 believe that your guilty plea was somehow unlawful or
20 involuntary or if there was some other fundamental defect in the
21 proceedings that was not waived by your guilty plea. You also
22 have a right to appeal your sentence under some circumstances,
23 particularly if you think your sentence is contrary to law.
24 However, a defendant may waive those rights as part of a plea
25 agreement, and you've entered into a plea agreement that waives

1 some or all of your right to appeal the sentence itself. Such
2 waivers are generally enforceable. If you believe the waiver is
3 unenforceable, you can present that theory to the court of
4 appeals. With few exceptions, a notice of appeal must be filed
5 within 14 days of judgment being entered.

6 Do you understand that, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: If you are unable to afford a transcript
9 of the record in this case, one will be provided at government
10 expense. If you're unable to pay the cost of an appeal or
11 filing fee, you may apply for leave to appeal in forma pauperis.
12 If you do not have counsel to act on your behalf and if you
13 request it, the clerk of the court will prepare and file a
14 notice of appeal on your behalf. You must make that request
15 within 14 days. The notice of appeal must designate the
16 judgment or order appealed from and the fact that you're
17 appealing to court of appeals. It should designate the portion
18 of the proceedings not already on file that you deem necessary
19 for the reporter to include.

20 Anything further?

21 MS. CHOU: No, your Honor. Thank you.

22 MR. McCURRY: No, your Honor.

23 THE COURT: Thank you.

24 (Proceedings adjourned at 1:43 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 COUNTY OF LOS ANGELES)
4 STATE OF CALIFORNIA)

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7 I, Pamela A. Batalo, Federal Official Realtime Court
8 Reporter, Registered Professional Reporter, in and for the
9 United States District Court for the Central District of
10 California, do hereby certify that pursuant to Section 753,
11 Title 18, United States Code, that the foregoing is a true and
12 correct transcript of the stenographically reported proceedings
13 held in the above-entitled matter and that the transcript page
14 format is in conformance with the regulations of the Judicial
15 Conference of the United States.

16
17 Date: October 25, 2012
18
19

20 /s/ Pamela A. Batalo
21 Pamela A. Batalo, CSR No. 3593, FCRR, RMR
22 Federal Official Court Reporter
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